APPENDIX A

IN THE SUPERIOR COURT OF CHATHAM COUNTY, GEORGIA

EASTERN HEIGHTS PRESBYTERIAN CHURCH AND FRANK L. PERRY, SR., ET AL., AS TRUSTEES OF EASTERN HEIGHTS PRESBYTERIAN CHURCH

vs.

PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL.

No. 5085

Judgment

The jury impaneled to try the above styled cause of action having on December 15th returned a verdict in behalf of the Plaintiffs and against the Defendants, a judgment is hereby rendered in behalf of the Plaintiffs and against the Defendants permanently enjoining and restraining said Defendants from trespassing upon the Plaintiffs' properties in any manner which would interfere with Plaintiffs' quiet and peaceful possession and use thereof.

This December 22, 1966.

/s/ Dunbar Harrison
Judge Superior Court,
E.J.C. of Georgia

24366. PRESBYTERIAN CHURCH IN THE UNITED STATES et al. v. EASTERN HEIGHTS PRESBYTERIAN CHURCH.

24367. PRESBYTERIAN CHURCH IN THE UNITED STATES et al. v. MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH.

1. Civil courts will, in a proper case, prevent diversion of church property from the doctrine or purpose to which it was originally devoted.
2. The degree of abandonment of, or departure from, original tenets of faith and practice by the general church which must be shown to afford such relief to the local churches is substantial, rather than complete or absolute.
3. The evidence presented an issue for the jury as to whether there was such a substantial abandonment or departure by the general church.
4. The above rulings are controlling adversely to the appellants upon all of their enumerations of error.

ARGUED NOVEMBER 13, 1967—DECIDED JANUARY 18, 1968—REHEARING DENIED FEBRUARY 12, 1968.

Injunction. Chatham Superior Court. Before Judge Harrison.

Frank S. Cheatham, Jr., for appellants.

Owen H. Page, Richard T. Cowan, Frank B. Zeigler, for appellees.

GRICE, Justice. The issue here is whether two local Presbyterian churches, in withdrawing from the general organization, are entitled to the local church properties. It stems from claims by the local churches that the gen-

eral church has abandoned the fundamental tenets of faith and practice existing when the local churches affiliated with it.

This litigation began on May 26, 1966, when Mary Elizabeth Blue Hull Memorial Presbyterian Church and Eastern Heights Presbyterian Church, incorporated nonprofit religious institutions located in Savannah, filed in the Superior Court of Chatham County petitions against the Presbyterian Church in the United States (herein referred to as "the general church") and the named chairman of the Administrative Commission of its Presbytery of Savannah. Each of the petitions sought injunctive relief against the general church organization interfering with the local churches' exclusive use and control of the local church properties. The defendants denied the material allegations of the petitions and sought affirmative equitable relief.

The two cases were tried together, resulting in verdicts and judgments in favor of the local churches.

The enumerations of error complain of the trial court's denial of motions to dismiss the petitions, for nonsuit and for directed verdict, the admission of certain evidence, and also one portion of the charge to the jury.

The allegations of the petition of Eastern Heights and its trustees, insofar as necessary to recite here, are those which follow.

The congregation, on April 17, 1966, adopted a resolution, a copy of which was transmitted to the general church and its Savannah Presbytery. This resolution affirmed the congregation's religious faith and beliefs as originally adopted by the general church in 1861, declared that the general church had violated its constitution and

departed from the faith and practice existing when Eastern Heights affiliated with it, and declared that Eastern Heights severed all connection with the general church and was henceforth an autonomous Presbyterian church. This resolution recited that the violations and departures of the general church from its original tenets of faith and practice included the following: ordaining of women as ministers and ruling elders, making pronouncements and recommendations concerning civil, economic, social and political matters, giving support to the removal of Bible reading and prayers by children in the public schools, adopting certain Sunday School literature and teaching neo-orthodoxy alien to the Confession of Faith and Catechisms, as originally adopted by the general church, and causing all members to remain in the National Council of Churches of Christ and willingly accepting its leadership which advocated named practices, such as the subverting of parental authority, civil disobedience and intermeddling in civil affairs.

The petition alleged that the general church has also made pronouncements in matters involving international issues such as the Vietnam conflict and has disseminated publications denying the Holy Trinity and violating the moral and ethical standards of the faith.

It averred that all of the foregoing constitute a substantial, fundamental and radical departure from the faith and practice of the general church and have occurred since the affiliation of Eastern Heights with it in 1930.

The petition further recites that on May 19, 1966, an Administrative Commission of the general church's Presbytery of Savannah took certain action by a resolution which, in material part, recited as follows: The Presbytery had received letters from the named ministers of

Eastern Heights and Hull Memorial in which each renounced the jurisdiction or authority over him of the general church and its Savannah Presbytery; that each had thus removed himself from office and membership in the general church and was no longer entitled to perform with ordained authority any act in it; that by the resolutions of Eastern Heights and Hull Memorial of April 17, 1966, all elders of both churches, except one not contacted and another who dissented, had removed themselves from office and membership in the general church; that they no longer had any authority to exercise office derived from the general church; that since there was but one ruling elder in each of the two churches and one ruling elder does not constitute a Session so as to exercise jurisdiction over the two local churches, the Commission "will secure Ministerial leadership and provide regular services of worship in the sanctuaries of [the two churches] for those members who wish to continue their membership in and communion with [the general church], and will take such further action as shall be necessary in accordance with the Constitution of [the general church]."

The petition also averred that by such Administrative Commission action, the defendants threaten to trespass upon the property of Eastern Heights by assuming original jurisdiction over it, denying it the right to exercise authority over its affairs and imposing other ministerial leadership upon it for the purposes of holding regular worship services; that the removal of the regular minister and the imposition of another would disrupt the good order and peace of its worship services; that the threatened acts of trespass would destroy the quiet and peaceful possession it now enjoys and would have a demoralizing effect upon it: that unless the threatened tres-

pass is enjoined Eastern Heights will be irreparably damaged, the peaceful utility and enjoyment of its property will be adversely affected, and the dignity and sanctity of the church edifice will be intruded upon.

The plaintiffs declare that they are seeking to protect their faith and avoid one in conflict with that in existence when they affiliated with the general church, and that they should have title to the church property quieted and confirmed in them to preserve the trust. They allege that Eastern Heights is vested with title and ownership and now enjoys quiet and peaceful possession of described real property, conveyed to it or to trustees of it.

The prayers of the petition were for temporary and permanent injunction against the threatened acts of trespass hereinabove described and other relief.

The allegations of the petition of Hull Memorial are similar in substance to those of Eastern Heights. Those necessary to recite are as follows: that it owns described real estate, one portion of which was acquired in 1914 by deed reciting that it was to be used for a place of worship by a church of the Presbyterian denomination known as the Mary Elizabeth Blue Hull Memorial Presbyterian Church; that it became affiliated with the general church in 1890; that no moneys have ever been contributed to it by the general church or by its Savannah Presbytery; that since it acquired its property the general church has made stated revolutionary, fundamental, unlawful, and radical diversion from the Presbyterian faith; and that in order to remain true to the Presbyterian doctrines and practices in force when it affiliated with the general church and acquired its property, it withdrew from the general church on April 17, 1966. The petition prayed

for the same relief sought by Eastern Heights and in addition asked that title to the local church property be adjudged in it.

To each of these petitions the defendants interposed similar answers and cross bills which denied the material allegations. They made allegations which, insofar as necessary to relate here, follow. Prior to the adoption of their withdrawal resolutions the members and ruling elders of Eastern Heights and Hull Memorial were members of the general church, which is representative in form, and were subject to its constitution and laws. Because of such withdrawal by the two local churches the Administrative Commission took the action recounted in its resolution of May 19, 1966, referred to above. Its decision was with full authority of the Savannah Presbytery, was made known to the plaintiffs, but was not appealed from and therefore became final and binding on the parties and the court. The defendants have a right of possession to the properties but the plaintiffs have appropriated them to the use of the two local churches, in violation of law and the rules of the church. This constitutes a continuing trespass which must be enjoined or the defendants will be irreparably injured, and the peace and dignity of their right of possession of the properties for religious worship for those loyal to the general church will be impaired. Each answer and cross action prayed, among other matters, for injunctive relief against the local churches' appropriation of the local properties and for decree that the Savannah Presbytery of the general church has an implied trust over such properties as the rightful representative of the general church for the use and benefit of those members adhering to the doctrines and regulations of the general church.

Upon the trial the evidence took a broad range, both oral and documentary. The highlights of the history of the Presbyterian denomination were recited by theologians. They traced the beginning more than four hundred years ago, the spread of the movement to the American colonies in the eighteenth century, the establishment of the Presbyterian Church in the United States of America, the withdrawal from it in 1861 by churches in the southern portion of the United States, and the organization in Augusta, Georgia, of the defendant Presbyterian Church in the United States, sometimes referred to as "The Southern Presbyterian Church." They enumerated the bases of faith and practice of this organization when formed in 1861 as the Old and New Testaments of the Holy Bible, the Westminster Confession of Faith, and the Larger and Shorter Catechisms.

They stated that the constitution of the general church is composed of such Confession of Faith, the two Catechisms, the Book of Church Order, and the Directory of Worship. They explained that the government of the general church is representative or connective, and not congregational. They recited that the structure of this government, in ascending order, is as follows: the Session of each local church which is made up of its ruling elders; the Presbytery which is constituted of several Sessions in a geographical area; the Synod which is ordinarily composed of the Presbyteries within a state; and the General Assembly which is formed by representatives from the entire organization. They related that these Sessions, Presbyteries, Synods, and the General Assembly also constitute the judicial system of the church organization.

The evidence was that the constitution of the general church contains no provision governing the situation here.

There was considerable testimony as to whether the general church had over the years in various controversies recognized local ownership of church property. It was shown that the only provision in its constitution for a Presbytery to take local church property was when the congregation no longer existed.

Local witnesses recounted the origin and development of the two local churches.

Eastern Heights began as a mission of the Independent Presbyterian Church of Savannah. It was incorporated on December 6, 1930, and on the following day was commissioned by the Savannah Presbytery of the general church. At that time the Independent Church conveyed to Eastern Heights property to be used as a chapel, this deed naming as grantee "Eastern Heights Presbyterian Church, a religious corporation." Later two other tracts were acquired by it, each deed naming as grantees certain persons as "Trustees of the Eastern Heights Presbyterian Church, and their successors in office." One of these deeds provided that the property was to be held in trust "for the use and benefit of the congregation of the Eastern Heights Presbyterian Church." At no time has the general church made any gift or loan to Eastern Heights.

Hull Memorial was organized as an independent Presbyterian church and became affiliated with the general church in 1890. A portion of the property now in question was acquired in 1914; the deed named the Mary Elizabeth Blue Hull Memorial Presbyterian Church as grantee and recited that the property was to be used as and for a place of worship by a church of the Presbyterian denomination known as that named grantee. Later other property was acquired by it and these later deeds also

named the Hull Memorial Church itself as grantee. Neither the general church nor its Savannah Presbytery has contributed any money to the purchase, buildings, operations, or maintenance of Hull Memorial.

Many documents were introduced in evidence. These included deeds, the withdrawal resolutions of the two local churches and the resolution showing the actions of the Administrative Commission above referred to.

Other documents pertained to the faith and practice of the general church when Eastern Heights and Hull Memorial affiliated with it and acquired the properties now in question. Many of these relate to actions which the two local churches cite as abandonment by the general church of its original tenets of faith and practice. These documents will be referred to later in this opinion.

From the foregoing facts, we regard the controlling question to be this: Are local Presbyterian churches which withdraw from the general church, charging abandonment by the general church of the tenets of faith and practice existing when the local churches affiliated with it, entitled to maintain an action in the civil courts for the possession and use of the local church properties, legal title to which is in the local churches?

1. The appellants strongly urge that the petitions raise ecclesiastical questions which are exclusively within the jurisdiction of the church, not of the civil courts, and therefore that the plaintiffs cannot maintain this action.

In considering this contention we are mindful that "The traditional American doctrine of freedom of religion and separation of church and state carries with it freedom of the church from having its doctrines or beliefs defined, interpreted, or censored by civil courts." *Sapp v. Callaway*, 208 Ga. 805, 810-811 (69 SE2d 734).

But, at the same time, we also keep in mind that when property rights are involved civil courts will, in a proper case, protect them against wrongful diversion. Our *Code*, § 22-408, provides: "Courts are reluctant to interpose in questions affecting the management of the temporalities of a church; but when property is devoted to a specific doctrine or purpose, the courts will prevent it from being diverted from the trust."

In this country the authorities are virtually unanimous in holding that because of the connective governmental structure of the Presbyterian Church, there is an implied trust upon the local church properties for the benefit of the general church. See in this connection, Watson v. Jones, 80 U.S. (13 Wall.) 679 (20 LE 666); St. John's Presbytery v. Central Presbyterian Church of St. Petersburg, (Fla.) 102 S2d 714, 717; Presbytery of the Everglades v. Morgan, (Fla.) 125 S2d 762. Furthermore, in the trial of the present cases the court charged the jury that the local church properties in question were subject to an implied trust in favor of the general church, and no cross appeal was taken on this portion of the charge by the local churches. We take the view that such a trust is conditioned upon the general church's adherence to its tenets of faith and practice existing when the local church affiliated with it and that an abandonment of, or departure from, such tenets is a diversion from the trust, which the civil courts will prevent.

This court in *Mack* v. *Kime*, 129 Ga. 1 (2) (58 SE 184, 24 LRA (NS) 675), held: "The general rule is that where property rights are involved, the civil courts will interfere to protect the members of an ecclesiastical organization who adhere to the tenets and doctrines which the organization was organized to promulgate, and protect

them in the right to use the property, as against those members of the organization who are attempting to divert the same to purposes utterly foreign . . . " See also, *Tucker* v. *Paulk*, 148 Ga. 228 (3) (96 SE 339), where this court approved the trial court's finding on whether the plaintiffs had "departed from the organization and doctrine of the church."

A different result is not required because of the rule that "Generally, the civil courts will look to the decisions of the constituted tribunals of a church in determining whether or not there may have been an abandonment of the faith, doctrines, practices, and decorum of a church." *Sapp* v. *Callaway*, 210 Ga. 277 (79 SE2d 532). Also, see *Mack* v. *Kime*, 129 Ga. 1, supra. Here, the Administrative Commission appointed by the Savannah Presbytery made no decision as to whether the general church had abandoned its original tenets of faith and practice. Furthermore, the local churches were not required to seek an adjudication of such issue within the framework of the general church because the diversions complained of had already occurred and the local churches had withdrawn and severed their connection with it.

The local churches charge abandonment of, or departure from, original tenets of faith and practice by the general church, and hence the civil courts will entertain the action.

2. Appellants contend that even if the civil courts will determine the question of abandonment of, or departure from, original tenets, the local churches must, under *Mack* v. *Kime*, 129 Ga. 1, supra, show absolute or complete abandonment in order to obtain relief.

The *Mack* case, in discussing the degree of abandonment or departure necessary to obtain protection, uses

terminology such as "complete abandonment," "purposes utterly foreign," "entirely abandon," "utterly abandon," and "abandon altogether." We disagree. We do not believe that "complete" or like degree of abandonment or departure is necessary for relief. To the extent that *Mack* v. *Kime*, .129 Ga. 1, supra, requires such standard, it is expressly overruled.

The degree of abandonment or departure necessary to be shown to obtain protection in civil courts is that emphasized in the case at bar by the trial judge—substantial abandonment. "Substantial" is synonymous with "fundamental," "material," "vital," and "important," and is in keeping with the standard which is recognized in the following treatise statement: "No denomination, however, can exercise its share of control over a local congregation so as to require the property of the latter to be used for propagation of doctrines in conflict with the fundamental teachings of the denomination as accepted at the time the local congregation united with the denomination. The unlawful change of the constitution and confession of faith by the superior judicatory does not authorize a new use of its property by the individual church. In such case those who adhere to the original constitution and confession of faith are entitled to the use of the property." 76 CJS 849, Religious Societies, § 70. See also, 45 AmJur 771, Religious Societies, § 61; Annots., 24 LRA (NS) 692, 8 ALR 105, 70 ALR 75.

To condition relief upon *complete* abandonment would impose upon the local churches the burden of showing that the general church had rejected each and every tenet of faith and practice existing when the local churches affiliated with it. For instance, suppose that this general church declared that it had abandoned as part of its tenets

of faith and practice the entire New Testament. With that abandonment would go the existence of Jesus Christ, and the accounts of His birth, ministry, crucifixion, resurrection, and ascension into heaven. That would not be a "complete" abandonment of all the original tenets of faith and practice of that church. Yet even with the Old Testament, with all of its value, remaining, this would be an entirely different theology.

Therefore, we hold that upon a showing of substantial abandonment of, or departure from, the original tenets of faith and practice by the general church, the civil courts will afford protection to the local churches as to possession and use of the local church properties, free of any claim by the general church.

It is significant that here the issue is between the local churches and the general church, not between two factions of a local church, as governed by *Code* § 22-406, which in material part provides that ". . . The withdrawal by one part of a congregation from the original body . . . is a relinquishment of all rights in the church abandoned." In this connection, we are familiar with some statements to the effect that the members of the local church who withdraw from the general church are not entitled to the property. See 45 AmJur 778, Religious Societies, § 68; 76 CJS 850, Religious Societies, § 71; St. John's Presbytery v. Central Presbyterian Church of St. Petersburg, (Fla.) 102 SE2d 714, supra, and citations. However, we know of no decision involving an issue between a local church and its general church, where a substantial abandonment of, or departure from, the original tenets of faith and practice by the general church is shown, which holds that in such situation the local church is not entitled to the use of its property. The cases relied upon by the appellants are thus distinguishable.

3. This brings us to the evidence and an evaluation of it in the light of the requirement of *substantial* abandonment or departure.

The first of the actions cited by the two local churches is the declaration of the 1961 General Assembly of the general church that the doctrine of foreordination, as stated in the Confession of Faith, is not essential to Reformed theology. This, the local churches contend, violates the Westminster Confession of Faith and the Larger and Shorter Catechisms in stated particulars.

Likewise claimed as departure from original tenets of faith and practice is the position taken by the General Assembly in 1965 in refusing to endorse a proposal by a Presbytery to seek constitutional permission for voluntary Bible reading and prayer in the public schools.

Another contended departure related to involvement, through the National Council of Churches for Christ, in the Mississippi Delta Project, a civil rights movement sponsored by several organizations.

Complaint is also made of the action taken by the 1963 General Assembly authorizing the ordination of women as ministers and ruling elders. This, the local churches claim, violates designated portions of the Scriptures and the Book of Church Order.

Several actions taken by this highest authority of the general church are urged to have been improper involvements in civil affairs, constituting an abandonment of original faith and practice.

One of the involvements thus complained of was a 1966 pronouncement on the Vietnam conflict. This pronouncement approved the policy statement which the Na-

tional Council of Churches for Christ had announced in 1965. That statement, after expressing sentiments upon the situation, concluded with the recommendation that the United States: "Continue to reaffirm and manifest its readiness for unconditional discussion and negotiation in such manner as will remove any uncertainty about official policy relating to the termination of military action. Such reaffirmation might be strategically expressed by the cessation of all bombing of North Vietnam for a sufficient period to create more favorable circumstances for negotiations to begin and with a simultaneous effort to induce the North Vietnam government to stop sending military personnel and material into South Vietnam."

Another involvement in civil affairs complained of was endorsement by the General Assembly of the civil rights movement.

One of the strongest objections by the two local churches is directed at the position of the general church on the subject of civil disobedience. Advocacy of this, insofar as the evidence shows, began in the spring of 1964.

The material for Sunday School teachers in "The Earnest Worker" for that period included a presentation entitled "The Rightful Claims of Government." After stressing obligations to both government and God, it declared that "these are times when the civil authority (or church authority, for that matter) must be disobeyed . . ." and stated that whether or not peace and quiet should be maintained in a community where there is injustice is a matter for each person to decide with his own conscience and what he believes will be pleasing to God.

The Sunday School Quarterly for Older Youth, the approximate age group of 12 to 15, for May 24, 1964, con-

tained a statement on civil disobedience, which is quoted here in full:

"Civil Disobedience. We are making history in our country and as Christians we should be awake to that fact. The problems created by segregation or integration are not new; they are as old as the human race. In our country the problem is not new, either, but in these past years we are all witnessing a new approach to that problem. For a century many have felt that the problem would solve itself as time went on; but we know now that hardly anything in human relations gets solved all by itself. About some sickness in the body, or a broken leg, we rightly say: be patient and let nature take its course. But with human problems one can hardly say that; human nature is not dependable, and is quite as likely to go the wrong way as the right way. In fact, the Bible keeps on drumming away at the idea that it is more likely to go that wrong way than the right way. That is the first point we should make today: that good causes must be helped along, and we Christians must not walk away from them.

"During the centuries people have used various methods of trying to get their problems solved: revolution, insurrection, immigration, strikes, shutdowns, sit-ins, picket lines. Each of these has had varied success in achieving results that were looked for. The phrase *civil disobedience* is something Gandhi has brought into our English language, and he says he got the idea from Jesus and the Sermon on the Mount. Today's reference to Luke 20 is of importance here. Jesus tells his questioner to give to Caesar the things that are Caeser's, but to God the things that are God's. This not only means that I pay my legitimate taxes to Caesar, and go to church on Sunday and

put something into the offering plate for God. It is not quite as simple as that. It may also mean that I *withhold* from Caesar what Caesar thinks is his, but what really belongs to God!

"The disciples ignored established customs when they walked through the cornfields, plucked some corn and ate it; this was threshing in the judgment of the scribes, and was prohibited. Jesus violated the code of the Pharisees' when He healed people on the Sabbath for the law at that time prohibited this. To help a sick man takes priority over the Sabbath laws; a moral law takes precedence over a civil law. You do not start a revolution; you do not bring in tanks and set machine guns up in front of the mayor's residence to shoot him when he comes out. You quietly make your protest known, persistently you make it known. When asked about it you give your morally justifiable reasons for doing what you do. You appeal to God and his righteousness rather than to the laws of the land. And you keep at it until the laws of the land are changed to conform to what you believe is right. And if the law says you may not picket or gather peaceably for purposes of protest, then you violate the law, appealing to a higher law to justify your actions. And, of course, you take the consequences.

"Taking the Consequences. There were some people in the early days of the church who were haled before the court because they would not sacrifice to the emperor. They believed emperor worship was idolatry, and that they could not affirm the Lordship of Christ and at the same time the lordship of the emperor. Many Christians were martyred because of their stand in this matter. Peter says that they must not be surprised at that treatment, and they mustn't be ashamed of it. If they

suffer because they have done wrong, that's what they can expect, and they shouldn't cry about it. But if they suffer for doing what was right and good, they must bear up under that too, and meanwhile commit their souls to a righteous Creator.

"This is true today when anyone feels it his or her duty to engage in some form of protest as a matter of conscience. If the paddy wagon comes and takes you off to jail you will have to bear up under that experience. If you had done wrong it would be an indignity; but if you have not done wrong, then it need not embarrass you. I do not think a Christian should go out of his way in order to get arrested, seeking martyrdom so he can talk about it."

In April 1965, the General Assembly, as shown by its minutes, went on record with a pronouncement entitled "Civil Disobedience: The Christian and the State." It is as follows:

"This brings us to the problem of civil disobedience: the open, non-violent and conscientious refusal to obey a law or laws, as a means of appeal to a higher law, combined with the willing acceptance of the penalty. It is an extreme demonstration of dissatisfaction with some aspect of society. It also presents in its purest form the problem of the relation of the Christian to the state.

"Paul, and the Confession of Faith as well, affirm that governments are instituted by God and should therefore be obeyed. However, the civil magistrates are also bound under their charge:

" 'To protect the person and good name of all their people in such an effectual manner as that no persons be suffered, either upon pretense of religion or infidelity, to

offer any indignity, violence, abuse or injury to any other person whatsoever.' (Westminster Confession, XXV, 3.)

"It needs no elaboration that within the province of our church, we have often kept silent, though men, because of race, have suffered 'indignity, violence, abuse, and injury.'

"It is true that within our system of government, means are provided, through the law, to present and adjudicate grievances for such injustices. Yet, when due course of civil law is denied or abridged, the Christian, for whom 'God alone is Lord of Conscience,' may validly appeal to the Higher Law, led by the inner witness of the Holy Spirit, speaking in and through the scriptures. This great ordering Word may lead him against the world, against the establishment of the civil magistrates. But he should be very cautious about taking such a lonely position and should hold it only in fear and trembling. If it leads him into civil disobedience, he should not try to justify his position before men. He has violated the law, the public standard of justice, and hence must recognize his liability to the judgment of the civil court.

"The church exists to unite men by God's grace with themselves, with God, and with their fellows—to make them whole. Therefore, it should give the support of Christian compassion to any member who, following his conscience in obedience to the Word, engages in civil disobedience.

"The methods of achieving justice which have been delineated here, while accomplishing in varying measures this end, cannot, in fact, bring to fruition our desire for unity in the bond of peace. Therefore, we as Christians are called upon to look beyond these methods to work

toward the reconciliation of all parties involved by encouraging dialogue in the spirit of Christian love."

A year later the 1966 General Assembly, in answering a number of overtures seeking its action on the above declaration, acknowledged "the unrest and disturbance within parts of the church" as a result of the declaration. However, it reaffirmed that statement and attempted to clarify its "spirit and intent," concluding with the following summation:

"The Presbyterian Church, U. S., desires at this time to reaffirm the obligation of all her obedient sons and daughters: (1) To live responsibly under the law of the land; (2) To use personal influence and ballot to enhance the rule of law so that injustice may be replaced with justice, and the full provisions of the law for justice, protection, and liberty may be enjoyed by every citizen of every community; (3) To regard civil disobedience as a measure of last resort to be employed only in circumstances of otherwise irremediable deed, and in the exercise of which the whole concept of law is not denied, but affirmed; and (4) To continue to support and regard with compassion those who practice civil disobedience when no legal recourse has been left open to them and who act in Christian conscience and allegiance to Almighty God."

These actions, positions and pronouncements by the general church, the local churches insist, violate fundamental faith and doctrines established long ago. They call attention to the Westminster Confession of Faith, which provides "Synods and councils are to handle or conclude nothing but that which is ecclesiastical; and are not to intermeddle with civil affairs which concern the commonwealth unless by way of humble petition in cases extraordinary; or by way of advice for satisfaction of

conscience, if they be thereunto required by the civil magistrate," (Ch. XXXIII, par. 4), and "It is the duty of the people to pray for magistrates, to honor their persons, to pay them tribute and other dues, to obey their lawful commands, and to be subject to their authority, for conscience' sake. Infidelity, or difference in religion, doth not make void the magistrate's just and legal authority, nor free the people from their due obedience to him; from which ecclesiastical persons are not exempted . . ." (Ch. XXV, par. 4). They also stress the applicability of certain provisions of the Book of Church Order, to wit: "The power which Christ has given his Church is wholly moral and spiritual, and constitutes the Church a kingdom and government distinct from the civil commonwealth . . ." (Ch. 1, § 1-2).

All these actions cannot be brushed aside as trivial and inconsequential. The General Assembly's declaration that foreordination was no longer necessary for Reformed theology was contrary to one of the basic tenets which have made Presbyterianism significantly different from other denominations. The General Assembly's endorsement of civil disobedience, which would allow a citizen to decide whether or not he will obey the law, is a radical venture into civil affairs. It is absolute defiance of law and order, and is the road to anarchy. Also, the General Assembly's recommendations as to what steps should be taken to secure peace in Vietnam is an entry into diplomatic and military matters beyond the church's function as delineated by its Westminster Confession of Faith and Book of Church Order.

These matters constituted a course of conduct by the highest level of the general church's government for a period continuing into 1966 when the withdrawal resolu-

tions were adopted by the local churches and the instant suits were filed. None of these departures existed when these two local churches affiliated with the general church.

As we appraise it, the foregoing evidence presented an issue for the jury to decide, whether the totality of actions of the general church amounted to a substantial abandonment of, or departure from, the original tenets of faith and practice by the general church. The jury found that they did.

4. The above rulings are controlling upon all of the enumerations of error made here.

(a) Under the rulings in Divisions 1 and 2, the trial court properly refused to grant appellants' oral motion to dismiss the petitions, asserting that the allegations concerning abandonment or departure from faith and doctrine are ecclesiastical questions exclusively within the jurisdiction of the church rather than the civil courts, and even if the courts are allowed to determine such question the plaintiffs have not shown absolute abandonment.

(b) The admission of testimony concerning departure from faith and doctrine by two of the appellees' witnesses was proper in view of the ruling in Division 1.

(c) Denial of the appellants' motions for nonsuit, based upon the ground that the appellees' admissible evidence was insufficient to sustain their actions as pleaded, and for directed verdict, upon the ground that there was no conflict in the evidence and it was shown that all ecclesiastical questions involved rested exclusively with the church, was proper under the rulings made in Divisions 1 and 3.

(d) In view of the ruling in Division 2, the trial court properly charged the jury on "substantial," rather than "absolute," as the degree or standard of abandonment of faith and doctrine by the general church they must find in order to give relief to the appellees.

We find no error in the matters enumerated as error. The judgments are therefo

Affirmed. All the Justices concur.

ON MOTION FOR REHEARING

We have carefully considered all of the contentions made by the appellants and have found them not meritorious. As to the contention that this was a matter for ecclesiastical, not civil, courts, it should be pointed out that the appellants in their answer and cross action filed in each case, specifically prayed for affirmative relief as to the property in question, thereby themselves invoking rulings by the civil court as to the matters now complained of.

The motion for rehearing is without merit, and is denied.

IN THE SUPREME COURT OF GEORGIA

PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL.
vs.
EASTERN HEIGHTS PRESBYTERIAN CHURCH
Case Number 24366

PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL.
vs.
MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH
Case Number 24367

Motion for Rehearing

NOW COME, Appellants in the above stated case and within the time allowed by law move for a rehearing and reversal of the decision rendered by this Court on January 18, 1968. The decision of the Court herein was contrary to the contentions of Appellants, and they respectfully show to the Court that in rendering said decision the Court overlooked certain material facts in the record and certain decisions, statutes, and a provision of the Constitution of the United States of America, which are controlling as authority and which require a different judgment from that rendered; and further that the Court erroneously construed or misapplied certain provisions of law and certain controlling authorities hereinafter set forth.

PRELIMINARY STATEMENT

The decision of the Court reverses long standing case law in the State of Georgia which conformed with the First and Fourteenth Amendments to the Constitution of the United States as expressed in United States Supreme Court cases hereinafter cited. The Court's decision will have a

disastrous effect on all Protestant churches in Georgia, whether connectional such as the Presbyterian Church or congregational such as the Baptist Church. It will end the separation of Church and State, a cornerstone of American liberty.

If the Court's decision stands, any member of any Protestant church can create a jury issue out of any action of the Church in perfecting or explaining or acting upon its doctrine, simply by alleging that the action of the church amounts to a substantial departure from what the church believed when he first became a member, and if the jury agrees with the disgruntled member of the church, the property can be delivered to his possession.

The effect of the decision is to destroy the free exercise of religion by religious bodies in Georgia and to impose the supervisory power of the Court on all actions of the Church that any member feels might constitute a substantial departure from the faith and doctrine of the church.

Appellants submit that not only is the Court's decision in error as to the law but that the practical application of its new standard of "substantial" deviation is incapable of definition that would be understood by a jury on a uniform basis. It reduces the question of what a church believes and whether or not it has substantially deviated from those beliefs, to the opinion of a jury of twelve citizens who at best are ill-prepared to decide the same.

When the judicial arm of the State, such as a jury, is allowed to decide such totally ecclesiastical matters, the separation between Church and State is destroyed. As Mr. Justice Black said in *Everson* v. *Board of Education*, 330 U.S. 1 (1947), at page 16:

> "Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and *vice versa*. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State'." [Citation omitted].

To allow the State, through its judiciary, to enter into church disputes is to violate the freedom of religion clause of the First Amendment (made applicable to the states by the Fourteenth Amendment) by taking from the church its constitutional right to decide purely ecclesiastical matters and giving that right to the courts. Surely no such result was intended by the framers of the First Amendment.

GROUNDS FOR REHEARING

1. The judgment of this Court which specifically overrules its older case of *Mack* v. *Kime*, 129 Ga. 1 (58 S.E. 184), which older case had adopted the interpretation by the Supreme Court of the United States of the First and Fourteenth Amendments to the Constitution of the United States as stated in *Watson* v. *Jones*, 80 U.S. 679, contravened the First and Fourteenth Amendments to the Constitution of the United States in that it denied to Appellants their right to free exercise of religion. Prior to this decision under the Georgia doctrine of stare decisis set forth in Ga. Code Section 6-1611, Appellants had a right to expect that the interpretation of the First Amendment to the Constitution of the United States by the Supreme Court of the United States would be applied by the Supreme Court of the State of Georgia in considering this case, as stated in *Watson* v. *Jones*, supra. By overruling *Mack* v. *Kime*, supra, this Court has denied Appellants the equal protection of the laws and the free exercise of religion guaranteed to them by the First and Fourteenth Amend-

ments to the Constitution of the United States by refusing to apply to the facts of this case the United States Supreme Court's interpretation of the First and Fourteenth Amendments of the Constitution.

2. The relief sought by the plaintiffs in the Court below would contravene the First and Fourteenth Amendments to the Constitution of the United States of America as interpreted by the United States Supreme Court in *Watson* v. *Jones*, 80 U.S. 679 and *Kreshik* v. *St. Nicholas Cathedral*, 363 U.S. 190, in that Appellees ask the State of Georgia, acting through its judiciary, to interfere with the free exercise of religion and deny the separation of Church and State, in that the Appellees ask the Superior Court of Chatham County, Georgia, to prevent the free functioning of the ecclesiastical government of the Presbyterian Church in the United States.

The case of *Kreshik* v. *St. Nicholas Cathedral*, *supra*, involved a dispute between the Russian Mother Church and its American offspring over the right to use and occupy St. Nicholas Cathedral in New York City. The matter first reached the United States Supreme Court in *Kedroff* v. *St. Nicholas Cathedral of the Russian Orthodox Church of North America*, 344 U.S. 94.

It was clear that prior to the Bolshevik Revolution the Russian Orthodox Church was an hierarchial church with unquestioned paramount jurisdiction in the governing body in Russia over the American branch of the church. A New York State Legislature undertook to transfer the control of the New York churches of the Russian Orthodox religion from the Patriarch in Moscow to the governing authorities of the Russian Church in America. The United States Supreme Court struck down New York State's attempt to deliver possession of the Cathedral to the American branch of the church.

After the case was reversed the New York Court of Appeals ordered a retrial of the question of the right of the American branch of the church to the use and occupancy of the cathedral on a common law issue. After the trial the New York Court of Appeals directed the entry of judgment against the Patriarch in Moscow holding that by reason of the domination—found by that Court to be the fact—of the Patriarch by the secular authority of U.S.S.R., his appointees could not under the common law of New York validly exercise the right to occupy the cathedral. The United States Supreme Court held that it made no difference that the State in the *Kreshik* case acted solely through its judicial branch, for whether legislative or judicial, it was still the application of State power and thus the judicial principles ruled on in the *Kedroff* dispute forbid the judiciary as well as the legislature of a state to interfere with the free exercise of religion.

In the *Kedroff* case Mr. Justice Reed, speaking of the New York law under consideration, said, beginning at page 119:

> "It passes the control of matters strictly ecclesiastical from one church authority to another. It thus intrudes for the benefit of one segment of a church the power of the State into the forbidden area of religious freedom contrary to the principles of the First Amendment. . . .
>
> "Ours is a government which by the 'law of its being' allows no statute, State or national, that prohibits the free exercise of religion. There are occasions when civil courts must draw lines between the responsibilities of Church and State for the disposition or use of property. Even in those cases when the property right follows as an incident from decisions of the church custom or law or ecclesiastical issues, the church rule controls. This under our Constitution necessarily follows in order that there may be free exercise of religion."

Although the Court in *Kedroff* was considering a state law, which is not involved in the present case, the *Kreshik* case made this reasoning equally applicable to judicial action. The result is that a state cannot, either through its legislative *or* judicial branches, decide purely ecclesiastical matters.

3. The judgment of the Superior Court of Chatham County contravenes the First and Fourteenth Amendments to the Constitution of the United States of America as interpreted by the United States Supreme Court in *Watson* v. *Jones*, 80 U.S. 679, and *Kreshik* v. *St. Nicholas Cathedral*, 363 U.S. 190, in that the State of Georgia, acting through its judiciary, has interfered with the free exercise of religion and denied the separation of Church and State in that the Court prevents the free functioning of the ecclesiastical government of the Presbyterian Church in the United States.

4. The relief afforded Appellees by the Court below contravenes the First and Fourteenth Amendments to the Constitution of the United States of America as interpreted by the United States Supreme Court in *Watson* v. *Jones*, 80 U.S. 679, and *Kreshik* v. *St. Nicholas Cathedral*, 363 U.S. 190, in that the State of Georgia, acting through its judiciary, has interfered with the free exercise of religion and denied the separation of Church and State, in that the permanent injunction issued by the Superior Court of Chatham County, Georgia prevents the free functioning of the ecclesiastical government of the Presbyterian Church in the United States.

5. The judgment of this Court which affirms the judgment of Chatham Superior Court contravenes the First and Fourteenth Amendments to the Constitution of the United States of America as interpreted by the Supreme Court in *Watson* v. *Jones*, 80 U.S. 190, in that the State

of Georgia, acting through its judiciary, has interfered with the free exercise of religion and denied the separation of Church and State and prevents the free functioning of the ecclesiastical government of the Presbyterian Church in the United States.

6. The Court erred in the first division of its Decision by holding that the actions of the General Church constituted a diversion of the church property from the doctrine or purpose to which it was originally devoted, for the following reasons:

(a) None of the actions of the General Church complained of by Appellees in any way affected or diverted the local church properties of Appellee churches. The actions of the General Church merely constituted an expression of the opinion of the General Assembly or the Commission of the church involved and were in no way binding upon local church members or the use of local church properties.

For example, the Amendment allowing the election of women elders did not require the local churches to do so but only allowed them to elect women elders if a majority of the local congregations so desired.

(b) The Court erred in applying Georgia Code 22-408 (page 11 of the Decision) to the facts in this case because the facts do not in any instance show that the properties involved have been diverted by any action of the General Church. The said Code section is a direct outgrowth of *Bates* v. *Houston*, 66 Ga. 198, 202, which involved a congregational church and in which the property was being directly affected by the actions complained of.

If the activities of the General Church had been such that the use of the local church properties or the worship required in the local church properties had been substan-

tially changed then the reasoning advanced by the Court might be more tenable. But this is not the case. The local churches were not required to elect women elders, they were not required to change their beliefs on preordination, they were not required to buy the literature with which they were dissatisfied, and they certainly were not required to become involved in the civil rights activities of the church.

At no time were the local properties diverted from the trust.

(c) The Court erred in apparently attempting to distinguish *Sapp* v. *Calloway*, 210 Ga. 277 (79 S.E.2d 532), on page 13 of the Decision, by citing the part of the Sapp case which requires courts to adhere to the decisions of constituted tribunals within the church and then stating that the Administrative Commission appointed by the Savannah Presbytery made no decision on abandonment of tenets or faith.

If the *Sapp* case is good law, and we believe it is excellent law as laid down by this Court in a full bench decision, then the actions of the General Assembly, being the highest tribunal within the church, are controlling upon the Court. Therefore, the activities of the General Assembly about which Appellees complain, are binding upon the civil courts provided that these actions were taken under the constituted by-laws and constitution of the General Church. There is no contention that these actions were outside the procedural laws of the church.

The *Sapp* case is actually at odds with the part of this Court's Decision which would allow a jury to consider ecclesiastical questions and although this Court overruled a portion of *Mack* v. *Kime*, supra, it has not overruled *Sapp* v. *Calloway*, supra, which remains controlling case law in Georgia.

That portion of *Sapp* v. *Calloway, et al.*, which states: "The Church acting through a majority of its members, settled this issue of doctrine and faith, viz., that a labor union was an oath bound secret society. Whether good or bad, true or false, neither the Court nor jury had a right to pass on the question of whether or not a labor union is an oath-bound secret society or not. Following the settled principles of law, the Courts of this State and of the United States, have consistently adhered to the sound and salutary rule that civil courts have no power or authority to interfere in the internal affairs of a religious organization, concerning doctrines of faith or belief. *Stewart* v. *Jarriel*, 206 Ga. 855. The traditional American doctrine of freedom of religion and separation of Church and State carries with it freedom of the church from having its doctrines and beliefs defined, interpreted, or censored by civil courts" is contrary to the Decision in this case.

(d) That portion of the Decision on page 13 which reads, "furthermore, the local churches were not required to seek an adjudication of such issue within the framework of the General Church because the diversions complained of had already occurred and the local churches had withdrawn and severed their connection with it." is an erroneous application of the general law and the laws of the Presbyterian Church because it would not require a person aggrieved of a decision of a lower judicatory within the church structure to appeal it to the higher judicatories prior to taking the matter to the civil courts. Until such time as it can be shown that the persons withdrawing from the General Church and appropriating the local properties, have exhausted their remedies within the church structure, they have no right to apply to the civil courts for redress. 76 C.J.S. Section 86, page 878. "It is generally held that a member, minister, or officer of a church aggrieved by a church decision or action must exhaust his

remedies within the church before he may resort to the courts for relief, but this rule is inapplicable where there is no higher church body from whom redress may be obtained."

Appellees did not attempt to have the General Assembly reverse its actions or activities by appealing either through the lower judicatories or directly to the General Assembly, but they took it upon themselves to pass judgment on the actions of the General Church and use this as their basis for withdrawal. The Court's decision now has the effect of destroying the appellate procedure within the church structure and allows a disgruntled person to take a grievance directly to the civil courts at any stage he desires.

7. The Court has erred in reversing that portion of *Mack* v. *Kime*, supra, which requires absolute abandonment before a civil court can become involved and in substituting "substantial abandonment", not only for the constitutional reasons hereinbefore cited in this motion but because the standard of "substantial abandonment" is incapable of a definition that can be understood on a uniform basis by any jury. What is substantial to one person may not be to another. It is also impossible for a person in determining whether or not an act is substantial to divorce from his mind his personal prejudices regarding the same.

This is probably one of the fundamental reasons why the Supreme Court of Georgia in *Mack* v. *Kime*, supra, and the Supreme Court of the United States in *Watson* v. *Jones*, 80 U.S. 679, have refused to allow the courts to intrude in religious affairs.

The effect of the new rule laid down by this Court is to make a jury question of any issue involving church

doctrine or application of that doctrine and to require the jury to determine first what the church believes and secondly whether there has been a substantial deviation from those beliefs. How is it possible for a jury of twelve persons to enter the often confusing quagmire of church doctrine, the vagueness of which probably brought the matter to Court in the first place, and exercise a judgment that would be superior to that of the church tribunals? There is no way, without destroying the doctrine of separation of Church and State in the process.

(e) The citation from 76 C.J.S. 849, on pages 14 and 15 of the Decision again emphasizes what has been argued previously in this motion. The citation refers to the situation where a local congregation is required to use the local property for the propagation of doctrines in conflict with the fundamental teachings of the denomination. Without repeating the argument hereinbefore cited, the actions taken by the General Church of which Appellees complain, do not in any instance ". . . require the property . . ." (76 C.J.S. 849) to be used for the propagation of doctrines in conflict with what the local congregation feels are the fundamental teachings of the denomination.

For the above reason, it is respectfully submitted that the citation submitted from C.J.S. in support of the contentions in the Decision is not in point.

It should be emphasized here, that the complaints of Appellees do not involve changes of the constitution or amendments to the Confession of Faith except in the case of women elders. The actions complained of involved resolutions passed by the General Assembly and activities of certain commissions of the church.

(f) It is noted that on page 16 of the Court's Decision, that Code Section 22-406 is dismissed on the grounds

that it only governs controversies between the two factions of a local church, although the Code Section is not limited to local church disputes. If this is the case, then Code Section 22-408 which is relied on by the Court on page 11 of the Decision and which comes out of the same decision of this Court in *Bates* v. *Houston*, supra, should be dismissed as it too involves a dispute between two factions of a local church.

8. The Court has erroneously construed and misapplied the evidence beginning at the bottom of page 16 of the Decision as the evidence does not support the new criteria of "substantial abandonment or departure" for the following reasons:

(a) The Court cites a resolution of the 1961 General Assembly on page 17 of the Decision by stating that the General Assembly declared ". . . that the doctrine of foreordination, as stated in the Confession of Faith, is not essential to the Reformed theology".

First, it should be noted that the declaration of the General Assembly did not in any way attempt to amend the portion of the Confession of Faith with which it was dealing but merely stated the opinion of a majority of those voting but merely stated that in their opinion it was not necessary for a member to believe that certain persons were preordained to Hell when they are born, in order to be a good Presbyterian.

There was nothing in this resolution that required any individual Presbyterian to believe it if he did not wish to do so. There was nothing in this resolution that amended the Confession of Faith as to predestination (see Westminster Confession of Faith, paragraph three, pages 36 and 37).

Looking for a moment at the substance of the resolution, there is nothing in it that contravenes basic Christian theology for the basis of belief in Jesus Christ is that all persons, no matter how evil they may be, can be saved if they will follow Christ.

(b) The same reasoning can be applied to the actions of the General Assembly regarding an amendment to the constitution permitting voluntary Bible reading and prayer in public schools, the National Council of Churches for Christ and their Mississippi Project, and certain statements made by the General Assembly, concerning Viet Nam and the civil rights movement.

In each instance, the action of the General Assembly only amounted to an expression of that particular General Assembly and could just as easily have been amended or modified or rejected by a subsequent General Assembly. None of these actions affected the use of the local church property or required adherence by local churches.

As a matter of fact, the statements cited in the Decision, beginning on page 19, which are taken from Sunday School literature, do not even constitute actions of the General Assembly but are the free expressions of the authors of those works. Add to this the fact that Appellees admitted during the trial that they were not even using the literature of which they were complaining (T. 180).

In summary, the alleged actions of the General Assembly constituted isolated instances in which opinions were expressed that were not binding upon the local congregations. The same is true of the literature of which Appellees complain.

When the vast array of doctrines and beliefs of the Presbyterian Church in the United States as set out in its Confession of Faith are compared with the complaints of

Appellees, it is difficult to understand how it can be said that they are substantial either as to the doctrines complained about or the volume of complaints.

9. The Court has overlooked *Stewart* v. *Jarriel*, 206 Ga. 855 (2) as cited in the main Brief of Appellants, which case is a full bench decision and is controlling on the question of the intervention of a civil court into ecclesiastical matters.

Although cited in the Brief, we will repeat here a brief excerpt from the Decision: "All questions relating to faith and practice of the church and of its members must belong to the church judicatories, to which the members have voluntarily subjected themselves since, when a person becomes a member of a church, he does so upon the condition of submission to its ecclesiastical jurisdiction and however much he may be dissatisfied with the exercise of that jurisdiction, he has no right to invoke the supervisory power of a civil court so long as none of his civil rights are involved. So long as a professed creed is not subversive to the peace and good order of society, it is not within the province of any department of government to settle differences in creeds or determine what ought or ought not to be a fundamental of religious belief."

This case reinforces *Sapp* v. *Calloway*, supra, and makes clear beyond all doubt that Courts of law have no right to become involved in interpreting the doctrines of a church regardless of their reasons for doing so.

Not cited in the original Brief, because it was only handed down on December 7, 1967, and has not as yet reached the advance sheets, is *Northside Baptist Church, et al.* v. *W. Kenneth Goodson, et al.*, by the United States Court of Appeals for the Fifth Circuit as case number 24421. (Because the case is not yet generally available a xerox copy is attached to this Motion) (R. 784-789).

Of interest to the point involved in this case is the statement on page 7 of the Decision as follows: "State and Federal courts alike are obliged to uphold the laws and rules of Church governing bodies against dissident factions. *Watson* v. *Jones*, 1871, 80 U.S. (13 Wall.) 679. *Judicial tribunals, as arms of government of the government, must avoid interference* with established church policies and government." [Emphasis added]. The Decision is well worth reading in its entirety.

CONCLUSION

As we understand the Court's Decision, it now makes a jury question out of any action of a church in amending its tenets or in expressing itself or taking action upon the same if a dissident member feels that such action by the church amounts to a substantial deviation from a doctrine or doctrines that existed when his local church joined the General Church.

In each instance, the jury would be required to find first what the church believed, second, whether or not the church has deviated from that belief, and, thirdly, whether or not there was a "substantial" deviation. In the process of these determinations the opinion of the jury would be completely substituted for that of the church. To allow this substitution is to violate the freedom of religion clause of the First Amendment to the United States Constitution (made applicable to the states by the Fourteenth Amendment).

The rationale that would allow a jury to become involved in such questions on the grounds of substantial deviation from doctrine, and the alleged benefits that would flow from such rights, is by far overshadowed by the destruction of the doctrine of separation of Church

and State and the highly impractical procedure of allowing a jury to determine ecclesiastical matters. For these reasons and the more specific reasons set out hereinbefore, we earnestly and respectfully request this Court to review and reverse its Decision, to reinstate the principles of *Watson* v. *Jones* which are expressed through *Mack* v. *Kime, Sapp* v. *Calloway,* and *Stewart* v. *Jarriel.*

The preservation of the connectional system of Protestant churches in Georgia is dependent upon this reversal.

Respectfully submitted,

/s/ Frank S. Cheatham, Jr.
Attorney for Appellants

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A copy of the foregoing Motion for Rehearing was mailed to counsel for Appellees, namely, Richard E. Cowan and Owen H. Page, to their regular mailing addresses this 26th day of January, 1968.

/s/ Frank S. Cheatham, Jr.

APPENDIX B

Excerpts from Minutes of 1966 General Assembly

"We call upon the members of our congregation to labor diligently as committed Christians within their communities to the end that the justice, protection and liberty inherent in our system of law are applied and made available to all citizens in those communities, both in spirit and in letter. We recognize that every system of law however excellent, is created, administered, and enforced by sinful human beings. In many communities throughout the area served by our Church, there have prevailed social mores and time-honored customs that have produced laws

which do not express the best in our fundamental concept of justice. There have been instances where those charged with administering the law have enforced it inconsistently within their communities, with the result that not only have there been occasions of injustice, but also that this injustice has had the quiet sanction of the law. We believe that these practices erode the whole concept of the rule of law, and subvert the system we support from its proper and legal effect. In these sorrowful instances, some of those more sensitive to injustice who have been deprived of the full benefits of the law have frequently been unable to secure the redress of their rights through the exercise of the law. The same circumstances that deprived these individuals of their rights have served to deny or frustrate their lawful petitions for the redress of those rights, depriving them also of that ultimate means of redress within our systems, a free ballot. Under this situation, an appeal was made by some to the larger community through the practice of civil disobedience as a final resort, other peaceful means having been deprived them. In these acts, those who were civilly disobedient accepted the consequences the law imposed upon them for its violation. Only under such sorrowful circumstances can civil disobedience be countenanced. This measure can be justified only under most pressing necessity. But when such a situation prevails the church may properly support those using this means to obtain for themselves those unalienable rights with which all men are endowed by their Creator. The Church can take the above position upon the Biblical ground which demands that every man's primary allegiance must be to God Almighty. Her proclamation through the ages has been, and should continue to be, that God alone is Lord, not only over every individual conscience, but also over every human institution." (R. 157-159).